

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 04-15403  
Non-Argument Calendar

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**FILED**  
**U.S. COURT OF APPEALS**  
**ELEVENTH CIRCUIT**  
**August 3, 2005**  
**THOMAS K. KAHN**  
**CLERK**

D. C. Docket No. 04-02317-CV-J-2

DENNIS HARDY,  
HENRIETTA HARDY,

Plaintiffs-Appellees,

versus

REGIONS MORTGAGE INC.,

Defendant,

CENDANT CORPORATION,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Alabama

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**(August 3, 2005)**

Before TJOFLAT, PRYOR and ALARCON\*, Circuit Judges.

PER CURIAM:

Cendant Corporation appeals the denial of its motion to compel arbitration by the district court. Cendant contends that the district court erred when it concluded that the Hardys had not assented to the arbitration provision contained in their membership agreement with the Shoppers Advantage club. Cendant relies heavily upon the decision of the Alabama Supreme Court in Memberworks, Inc. v. Yance, 899 So. 2d 940 (Ala. 2004), which is virtually indistinguishable from this case. The Hardys accepted a three-month trial period during which they received the arbitration agreement and could have cancelled their membership without a penalty. The Hardys instead accepted the arbitration provision when they continued to pay \$5 a month from July 1996 to 2003 for their membership in the club. Id. at 943-44; see also UBS PaineWebber, Inc. v. Brown, 880 So. 2d 411, 415 (Ala. 2003).

**REVERSED and REMANDED.**

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\* Honorable Arthur L. Alarcon, United States Circuit Judge for the United States Court of Appeals for the Ninth Circuit, sitting by designation.